

**Notice of Allowability**

Application No.

10/044,307

Examiner

David Nhu

Applicant(s)

CIAVATTI, JEROME

Art Unit

2818

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/15/03.
2. ☒ The allowed claim(s) is/are 1-8 and 26-37.
3. ☒ The drawings filed on 26 October 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |



### EXAMINER'S AMENDMENT

1. Applicant's election of claims 1-8, 26-37 in paper No. 5 is acknowledged. Because Applicant did not distinctly and specifically point out the supposed error in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). **Applicant have the right to file a divisional application covering the subject matter of the non-elected claims 9-25.**

The traversal is on the ground(s) that see the election paper. This is not found persuasive because the fields of search for method' and device claims are NOT coextensive and the determinations of patentability of method and device claims are different, that is process limitations and device limitations are given weight differently in determining the patentability of the claimed inventions. Also, the strategies for doing text searching of the device claims and method claims are different. Thus, separate searches are required.

The requirement is still deemed proper and is therefore made **FINAL**.

2. An examiner's amendment to the record appears below. Should the change and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

**Cancel claims 9-25.**

### REASONS FOR ALLOWANCE

3. Claims 1-8, 26-37 are allowed.

4. The following is an examiner's statement of reasons for allowance: None of the references of record teaches or suggests as cited in claim 1, 29: depositing and leveling a thick insulating layer selectively etchable with respect to the second insulating layer; depositing a fourth insulating layer, selectively etchable with respect to the third insulating layer (as cited in claim1); depositing a second insulating layer, selectively etchable with respect to the first insulating layer, over the first insulating layer; etching a first opening in the second insulating layer above a portion of the active region of the substrate without exposing any portion of the first insulating layer directly above the word line; depositing, after the etching step, a third insulating layer, selectively etchable with respect to the second insulating layer, over the first and second insulating layers and in the first opening (as cited in claim 29).

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **CONCLUSION**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Ikemasu (5,693,970): DRAM Device Comprising Memory Cells Having Capacitor Formed above Cell Transistor and Peripheral Circuit Ratio of Contact Hole in the Peripheral Circuit and Producing Method Thereof.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Nhu , (703) 306- 5796. The examiner can normally be reached on Monday-Friday from 7:30 AM to 5:00 PM.

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The examiner's supervisor, David Nelms can be reached on (703) 308-4910.

*The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7382.*

*Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956*

David Nhu



October 8, 2003

